IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.949 OF 2002

Shri Vilas Narsaiya Sandal,
aged about 52 years, residing at
Plot No.2, Block No.5, Ganesh Building,
Swargate Nagar, Hotgi Road,
Solapur. (at present lodged in ...Appellant
Central Prison, Yerawada, Pune) Ori.Accused

Versus

1.The State of Maharashtra

2.C.B.I., A.C.B.,
Bombay. ...Respondents

WITH

CRIMINAL APPEAL NO.779 OF 2002

Shri Vijaykumar Sidramappa Poredi,
Age: 55 years, R/o.18, SBI Colony
No.2, Bhavani Peth, Solapur.
(At present lodged in Solapur ...Appellant
Central Prison) Ori.Accd.No.1

Versus

The State of Maharashtra ...Respondent

.....

Mr.Girish Kulkarni as amicus curiae for Appellant in Cri.Appeal No.949/02.

Mr.P.P.Hudlikar with Mr.Agandsurve for Appellant in Cri.Appeal No.779/02.

Mr.Y.S.Shinde, A.P.P. for Respondent No.1/State in both matters.

Mr.R.F.Lambay, P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 22, 2007.

ORAL JUDGMENT :

1. Both these Appeals are being disposed of by this common Judgment. Appeal No.779/02 is filed by accused No.1, whereas, Appeal No.949/02 is filed by accused No.4. Accused No.4 had presented this Appeal through Advocate Shri K.M.Villkhoo. However, when this Appeal reached for hearing on August 24, 2006, it transpired that the said Advocate was unavailable. Accordingly, Court notice was issued to the accused No.4 to engage another Advocate on or before 7th September 2006, failing which, the Court would proceed to appoint Mr.Girish Kulkarni, Advocate, to espouse the cause of accused No.4 as amicus curiae. Notice so issued came to be duly served on accused No.4. Inspite of that, no other arrangement was made. As a result, Mr.Girish Kulkarni, Advocate was appointed as amicus curiae to espouse the cause of the accused

No.4 and hearing of the Appeal was proceeded as the Appeals pertain to year 2002 and the accused was in jail.

2. The Appellants, along with two others, were tried by the Special Court at Solapur in Special Case No.18/94 for offence punishable under Sections 420, 468, 471, 477A r/w 120-B of the Indian Penal Code, 1860 (hereinafter referred to as 'the I.P.C.') and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act').

3. It is the prosecution case that all the accused at the relevant time were working in State Bank of India, Treasury Branch, Solapur between the period 1989 to 1992. Accused No.1 was working as Accountant; accused No.2 as Passing Officer; accused No.3 as Deputy Head Cashier and accused No.4 as Clerk-cum-typist. It is alleged that on 11th September 1992 one of the Bank customer Mr.Ramesh Shetty Bandpatte (PW 1) complained about withdrawal of Rs.30,000/- (Rupees Thirty Thousand)

from his account without his knowledge or instructions. On that basis, enquiry was initiated by the Manager of the Bank Mr.Sharad Laxman Kulkarni (PW 30). Soon thereafter, complaints from other customers were received about difference of balance amount between their passbooks and ledger folios, although they had never withdrawn the amount referred to in the said books. The complaint received from various customers was forwarded to the Divisional Manager by the Branch Officers. Having regard to the seriousness of the matter, Manager Mr.Kulkarni (PW 30) and the Manager, Personnel Banking Division of Treasury Branch, Solapur Mr.Subhash Gopalrao Bhalwankar (PW 24) were assigned with the enquiry into the allegations made by various customers. At the end of their enquiry, fraud to the extent of Rs.17,00,000/- (Rupees Seventeen Lakhs) committed by the bank officials was unravelled. Amounts were withdrawn from several accounts under 123 withdrawal slips which aggregated to Rs.17,00,000/- (Rupees Seventeen Lakhs). Most of the withdrawal slips were in the handwriting of accused No.4 and the slips were verified and passed by accused No.1

and accused No.2. In these Appeals, we are concerned only with accused no.1 and accused No.4. The Bank Officials PW 30 and PW 24 submitted

detailed enquiry report to the Divisional Officer on 14th September 1992.

4. As it was a case of offence committed by the accused, First Information Report (F.I.R.) was registered by Jyotikumar (PW 31) bearing No.RC 66/A/92-Bom., on 15th October 1992. PW 31 then carried on the investigation. He visited Solapur and examined about 21 witnesses. He also arrested accused No.4, who admitted his signatures and thumb impressions. The questioned documents on the basis of which withdrawals were made from different accounts along with the admitted signatures and thumb impressions of accused No.4 were forwarded to the Government Examiner. The Government Examiner in turn submitted his report Exhibit 262.

5. In substance, the prosecution case against accused No.1 and accused No.4 is that accused No.4, while working as clerk in the concerned branch,

falsely signed various pay-in slips (withdrawal slips) pertaining to various customers. The said pay-in slips were filled in and signed fraudulently by accused No.4. Accused No.4 himself accepted the amount against such fraudulent withdrawal slips.

6. Insofar as accused No.1 is concerned, his role was that of verifying and passing the withdrawal slips. Accused No.1 is linked with withdrawal slips Exhibits 117, 176, 180 to 186 and 189. He had signed those documents after verification with the specimen signatures of the customers in the bank as Passing Officer, inspite of being aware of the fact that the withdrawal slips presented for withdrawal of cash amount did not bear genuine signatures of the concerned customers.

7. It is the prosecution case that all the accused, in furtherance of common intention and criminal conspiracy with each other in order to defraud various customers, had fraudulently prepared pay-in slips and had passed the same and received amounts therein, as a result of which,

defrauded the Bank to the tune of Rs.17,00,000/- (Rupees Seventeen Lakhs).

8. The accused denied the charge and claimed to be tried. The prosecution to substantiate case against all the four accused examined in all 32 witnesses and produced documentary evidence as well. PWs. 1, 2 and 4 to 21 are the account holders in the said Branch. PWs. 3, 22 to 30 were the Bank Officials. Amongst them, PWs 22 and 23 were the Sanctioning Authority. PW 31 is the Investigating Officer and PW 32 is the handwriting expert. The Trial Court considered the entire gamut of the evidence to hold that insofar as accused Nos.2 and 3 are concerned, there was no clear evidence about their complicity in the commission of the crime or for that matter, being party to the conspiracy. Insofar as accused No.4 is concerned, the Trial Court found that there was clinching evidence to prove beyond doubt the involvement of the said accused in the commission of the offence, for which he was being tried. For that, the Trial Court has placed reliance on the evidence of the prosecution witnesses as well as

documentary evidence. Insofar as accused No.1 who discharged the role of Passing Officer, the Trial Court has found him guilty along with accused No.4 being party to the criminal conspiracy. The Trial Court has essentially found that from the documentary as well as ocular evidence, it was abundantly clear that accused No.1 had knowledge about the illegal activity and was party to the conspiracy. For that, the Trial Court not only relied on the oral evidence but on the documentary evidence such as withdrawal slips Exhibits 117, 176 and 185. Insofar as these three slips are concerned, the Trial Court has found that signatures on these withdrawal slips, in no manner, correspond or tally with the specimen signatures of the concerned customers available in the Bank's record. As it was clear case of dissimilarity of signatures, the Court has inferred that inspite of such suspicious circumstance, accused No.1 having allowed the slips to be passed as genuine ones, has done that only to facilitate the crime with knowledge. Consistent with the findings on fact, the Trial Court proceeded to convict accused No.1 as well as accused No.4 of the alleged offence.

Insofar as accused No.1 is concerned, except the charge of Section 120-B of I.P.C., on all other counts, he has been sentenced to suffer rigorous imprisonment for three years each and to pay fine of Rs.10,000/- (Rupees Ten Thousand), in default, to undergo further rigorous imprisonment of six months. Insofar as offence of Section 120-B of I.P.C. is concerned, accused No.1 has been sentenced to suffer rigorous imprisonment for one year and fine of Rs.10,000/- (Rupees Ten Thousand), in default, to undergo further rigorous imprisonment for a period of three months. With regard to offence under Section 13(2) read with Section 13(1)(d) of the Act, the fine amount as against accused No.1 is stipulated as Rs.50,000/- (Rupees Fifty Thousand), in default,to undergo further rigorous imprisonment for one year. Insofar as accused No.4 is concerned, except the offence of Section 120-B of the I.P.C., for all other offences, he has been ordered to suffer rigorous imprisonment for a period of seven years and fine in the sum of Rs.1,00,000/- (Rupees One Lakh), in default, to suffer further rigorous imprisonment for one year on each count. Insofar

as offence under Section 120-B is concerned, accused No.4 is sentenced for a period of one year and fine in the sum of Rs.1,00,000/- (Rupees One Lakh), in default, to suffer further rigorous imprisonment for a period of further one year. Insofar as offence under Section 13(1)(d) read with Section 13(2) of the Act, accused No.4 has been ordered to suffer rigorous imprisonment for seven years as well as fine of Rs.15,00,000/- (Rupees Fifteen Lakhs), in default, to suffer rigorous imprisonment for a period of two years.

9. The above decision is the subject matter of challenge by way of two separate Appeals of accused Nos.1 and 4. I shall first broadly advert to the manner in which the Trial Court has analysed the matter to record finding of guilt against the Appellants herein (accused Nos.1 and 4). In the first place, the Trial Court has compared the questioned pay-in slips (withdrawal slips) with the specimen signatures of the concerned customers available in the bank records. The specimen signature of PWs.1, 2, 4, 5, 11, 14, 20 and 21 have been produced on record as Exhibit Nos.57, 63, 67,

73, 88, 98, 116 and 129 respectively. In addition, the specimen signature of one other customer N.S.Maniyar who is not examined, was produced as Exhibit 112. The evidence regarding account numbers of the concerned prosecution witnesses has also come on record. The Trial Court then went on to analyse the evidence of respective bank customers, who have been examined as prosecution witnesses, in particular, PWs. 1, 4, 5, 6, 7, 10, 11, 18, 19, 20 and 21. Each of them have disputed their signature occurring on the concerned withdrawal slips. Withdrawal slip Exhibit 55 is ascribed to PW 1. Similarly, withdrawal slip Exhibit 176 to PW 2, Exhibit 185 to PW 4. Exhibits 156, 172, 180, 181, 195 to 210 (in all 15) to PW 5. Exhibits 187 to 189 to PW 18. Exhibits 118, 119, 120 to PW 19. Exhibit 117 to PW 20. Exhibits 127, 128, 215 to 220 to PW 21 and Exhibits 118, 119 and 120 to N.S.Maniyar who has not been examined. I have already adverted to the evidence produced by the prosecution regarding specimen signature card of the respective Plaintiffs in the earlier part of this Judgment. The Trial Court has then analysed the evidence of Bank Officials, particularly, PW 25

to PW 30, who have corroborated the assertion made by the Bank customers. These Bank Officials (PW 25 to PW 30) have asserted that the handwriting and the signatures appearing on the questioned withdrawal slips were similar to that of accused No.4. The Trial Court has then referred to the evidence of handwriting expert (PW 32) as well as the report and opinion (Exhibit 262) given by him, which supports the version of Bank Officials. PW 25 has spoken about Exhibits 156, 157 and 158. PW 26 has spoken about Exhibit 161 as also Exhibits 162 to 172. PW 27 has spoken about Exhibits 116, 119 and 174. PW 28 about Exhibits 176 and 117, PW 29 about Exhibits 100 to 189 and PW 30 about Exhibits 199 to 225. Thus, taking into account the oral as well as documentary evidence, which clearly indicated the involvement of accused No.4, the Trial Court found him guilty of the alleged offence.

10. Insofar as accused No.1 is concerned, the Trial Court besides referring to the above evidence, has also referred to the evidence of PW 24 and in particular, PW 28 and PW 29. PW 24 has

given the procedure of verification done by the Passing Officer of the pay-in slips (withdrawal slips). Accused No.1 although admitted having connection with passing of Exhibits 117, 176, 182 to 186 and 189, however, pleaded that he had no knowledge about the illegal activity of the Accused No.4 and had in good faith verified and passed the concerned withdrawal slips on the basis of which, the accused No.4 withdrew the amount referred to in the respective slips. It was contended on behalf of the accused No.1 that at best, it was a case of negligence and no *mens rea* can be attributed to accused No.1. The Trial Court, however, has negatived that plea not only on the basis of the oral evidence but the documentary evidence in the shape of withdrawal slips and the specimen signature of the concerned Bank customer maintained in the Bank record. It has been found by the Trial Court as of fact that at least in five slips, it was evident that the signatures on the withdrawal slips were materially different from the specimen signatures of the concerned customer in the bank record. The Court noted that such signatures on the withdrawal slips surely raised suspicion, but

the accused No.1 allowed even those withdrawal slips to pass-off as genuine ones - which resulted in withdrawal of the amount referred to therein by accused No.4. Insofar as accused No.1 is concerned, the Trial Court has noted that out of the five withdrawal slips referred to earlier, the accused No.1 was associated with the transaction in relation to Exhibits 117, 176 and 185 and was thus, party to the conspiracy.

11. During the course of hearing of this Appeal, it transpired that the English version of the typed evidence was incorrect. Accordingly, the original Marathi version was preferred and relied upon at the hearing of the Appeal. At the same time, English translation of the evidence was called from the Office of the Official Translator of the High Court and after the same became available, it has been taken on record with the consent of both sides.

12. At this stage, it will be apposite to remind the subordinate Courts in the State, of the provisions in Sections 275 to 278 of the Code of

Criminal Procedure, 1973 (hereinafter referred to as 'the Code'). Section 275 relates to the manner in which record in warrant-cases tried before a Magistrate, is to be maintained. In such proceedings the evidence of each witness is required to be taken down in writing either by the Magistrate himself or by his dictation in open Court, as the examination proceeds. In case, the Magistrate is unable to do so himself owing to his physical or other incapacity, such recording is required to be done by an officer of the Court appointed by the Magistrate under his direction and superintendence. Sub-section (2) of Section 275 obligates that after the Magistrate causes the evidence to be taken down, he shall record a certificate that the evidence could not be taken down by himself for the reasons referred to in sub-section (1). Primarily, therefore, the obligation of taking down the evidence of each witness as the examination proceeds, is on the Magistrate. What is relevant to notice is the mandate of sub-section (3) of Section 275. It obligates that the evidence shall ordinarily be taken down by the Magistrate in the form of a

narrative or he may cause any part of such evidence to be taken down in the form of question and answer. The evidence so taken down is required to be signed by the Magistrate which then forms the part of the record. Section 276 of the Code postulates that in all trials before a Court of Session, the evidence of each witness should be taken down in writing by the presiding Judge himself, as the examination proceeds. It also enables the presiding Judge to take down the evidence by his dictation in open Court or under his direction and superintendence by an officer of the Court appointed by him in that behalf. Sub-sections (2) and (3) of Section 276 are analogous to sub-sections (3) and (4) of Section 275. Section 277 provides that if the witness gives evidence in the language of the Court, it shall be taken down in that language. In case, the witness gives evidence in any other language, the Judge may if practicable, take down in that language and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds. That will have to be signed

by the Magistrate or the Presiding Judge which would then form part of the record. Same provision requires that if the evidence is taken down in a language other than the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, to be signed by the Magistrate or the Presiding Judge and which would form part of the record. Indeed, the proviso to Section 277 stipulates that the requirement of translation of the evidence in the language of the Court if it is taken down in English can be dispensed with if the parties so opt.

13. What is relevant to be observed by the Subordinate Courts is the requirement of Section 278 of the Code. It mandates that as the evidence of each witness recorded under Section 275 or 276 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected. Invariably, the record of cases produced before this Court at the hearing, do not fulfil this requirement. Whereas, if this requirement was to be observed in its letter and

spirit, the situation as has occurred in the present case, would have been avoidable. This is so because the English translation of the evidence taken down by the Judge is not accurate at more than one place and on material points, when compared with the same evidence of the concerned witness recorded by the Court in Marathi. On compliance of the requirement under sub-section (1) of Section 278, it is not only the accused but also the witnesses gets opportunity to know as to what has been taken down as his evidence by the Court. Sub-section (2) of Section 278 provides that if the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or Presiding Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks necessary. If this requirement is fulfilled, there would be no occasion for the Appellate Court to ponder on the issue of correctness of the version available in the record. I thought it necessary to elaborate on this matter for the future guidance of the lower Court Judges who are called upon to take down

evidence of the witnesses in every singular criminal case.

14. Be that as it may, after having closely analysed the evidence on record and juxtaposed with the finding of fact reached by the Trial Court, I have no hesitation in taking the view that the conclusion reached by the Trial Court is not only possible view but is unassailable. The prosecution has proved the questioned 123 withdrawal slips. The Bank customers in whose name the withdrawal slips were tendered have themselves come forward and deposed about the falsity of the documents. They have asserted that the signatures and writing on the concerned withdrawal slips did not belong to them and they had no knowledge about the withdrawals at all. The oral evidence of these witnesses is corroborated by the evidence of Bank Officials, who have deposed that the handwriting on the concerned withdrawal slips were that of accused No.4. This assertion is supported by the report (Exhibit 262) and opinion of the handwriting expert (PW 32) and his evidence in that behalf. Besides, the specimen signatures of the concerned customers

available in the Bank record have been proved and accepted, which supports the claim of the Bank customers examined as prosecution witnesses.

15. The Trial Court, out of 123 withdrawal slips accepted the prosecution case at least in relation to Exhibits 55, 176, 185, 156, 174, 180, 181, 195 to 210, 187 to 189, 118, 119, 120, 117, 127. For the time being, we shall confine our discussion to Exhibit Nos.176, 185 and 117, as these Exhibits are common to both the accused before this Court (i.e. Accused Nos.1 and 4). The case spelt out by the prosecution on the basis of these Exhibits has been accepted by the Trial Court. In other words, it will not be necessary for us to analyse the entire evidence. It would be enough for this Court even if this Court was to hold that the involvement of accused Nos.1 and 4 is established in at least one such transaction as has been proved by the prosecution beyond reasonable doubt. This would assist in only curtailing the length of the Judgment.

16. We shall first straightaway advert to the

withdrawal slip Exhibit 176. The said withdrawal slip was presented by accused No.4 which related to account of Mohanlal A.Sondekar (PW 2). PW 2 has disclosed the Account number as 88/22678. He has stated that on reading the news item dated 16th September 1992 regarding mismanagement in State Bank of India, Solapur Treasury Branch, he rushed to the Bank to ascertain the entries in the ledger book of his account. On such enquiry, it transpired that amount of Rs.20,000/- (Rupees Twenty Thousand) was withdrawn from his account under withdrawal slip Exhibit 176 on 22nd August 1992, which did not bear his signature. This fact was immediately reported to the Branch Manager. He has reiterated in his evidence that the questioned withdrawal slip dated 22nd August 1992 was not under his signature, for which reason, it was a false, forged and bogus document. His version is corroborated by the specimen signature in Banks record Exhibit 63 proved by him. On comparing Exhibit 63 with Exhibit 176, even a layman can make out the difference in the two signatures. There is no similarity at all. The Bank Official (PW 28) has corroborated the assertion of PW 2. He has

proved the questioned document Exhibit 176. PW 28 has spoken about the contents of the said document Exhibit 176. He has stated that the pay-in slip was in the handwriting of accused No.4. It also bears the signature of accused No.5 for having posted and having given token. He has identified the signature and handwriting of accused No.4. He claims that he and accused No.4 were working for about ten years together and he was familiar with his signature and handwriting. He has further deposed that the amount as per the withdrawal slip (Exhibit 176) was paid to the accused No.4 and accused No.4 has signed overleaf the pay-in slip in token of having accepted the amount. He has identified the signature of accused No.4. This witness has also stated that the questioned withdrawal slip (Exhibit 176) was verified and recommended for payment by accused No.1 as Passing Officer. He has identified the signature of accused No.1 on the said withdrawal slip. The fact that the two signatures on Exhibit 176-withdrawal slip and Exhibit 63-specimen signature were dissimilar, has been further established from the evidence of handwriting expert (PW 32) and report

submitted by the handwriting expert Exhibit 262. PW 24 has spoken about the procedure which is followed for passing the withdrawal slips for payment. In other words, there is not only oral evidence to support the prosecution case but documentary evidence to substantiate the same. From this evidence, it is plainly clear that it was not only a case of fraud, forgery, falsification of account, but also a case of using the forged document as genuine one and of getting pecuniary advantage of the said transactions. It is in this backdrop, the Trial Court has recorded finding of guilt, as evidence on record substantiates the prosecution case beyond reasonable doubt.

17. Insofar as Exhibit 176 is concerned, the argument of the Counsel for the accused is that the withdrawal slip (Exhibit 176) was not put to this witness (PW 2) and not proved by this witness. For that reason, the evidence of PW 2 will be of no avail to the prosecution and the fact of forgery has not been proved by this witness. The argument deserves to be stated to be rejected. Indeed, withdrawal slip has not been exhibited while this

witness (PW 2) was in the dock. That however, does not mean that the said document has not been proved. This witness (PW 2) was shown the withdrawal slip and he has positively stated that the signatures thereon did not belong to him. This assertion has not been shattered in the cross-examination at all. In Paragraph 5, this witness (PW 2) has denied that the handwriting on the withdrawal slip was his own handwriting. P.W.2 has also denied during the cross-examination, suggestion put to him that he himself has withdrawn that amount of Rs.20,000/- (Rupees Twenty Thousand) on 22nd August 1992. Suggestion is given to this witness that he was deposing false only to get benefit of Rs.20,000/- (Rupees Twenty Thousand) from the Bank after lodging the complaint, which suggestion has been denied by the witness. What is relevant to note is that the questioned withdrawal slip has been exhibited during the evidence of P.W.28, who is the Bank Official and who has proved contents thereof. This document could be brought on record only through PW 28 as coming from proper source.

18. It was contended on behalf of the accused that none of the prosecution witnesses have spoken about forgery in relation to Exhibit 176. This submission clearly overlooks the oral evidence of P.W.2 and P.W.28 which is corroborated by the documentary evidence as well as handwriting expert's evidence and his opinion. The evidence will have to be read as a whole and if so read, the case of forgery is clearly spelt out. Suffice it to observe that the argument canvassed on behalf of the accused to persuade me to overturn the finding of fact recorded by the Trial Court which has accepted the prosecution case in relation to withdrawal slip Exhibit 176, cannot be countenanced. Assuming it were to be a case of signature of the concerned Bank customers or account holders on the withdrawal slips, the fact remains that it has been proved beyond doubt that the contents of the said withdrawal slips were filled up in the handwriting of accused No.4 and presented for withdrawal by accused No.4 and the amount has been paid to accused No.4. Such a case would be covered by illustration (c) of Section 464

of the I.P.C., so as to constitute forgery. Section 464 Illustration (c) reads thus:

> "(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the Cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery."

19. Let us turn to the other circumstance which involves both the accused No.4 and accused No.1. The Trial Court has relied upon the withdrawal slip Exhibit 117, which relates to the account of one Ganesh T.Kamble (PW 20). PW 20 has given his account number as 87/226333. He was shown the passbook which he had produced before the Bank Official. The same is marked as Exhibit 114 dated 15th April 1989. He has then deposed that in 1992, he had gone to the Bank to withdraw sum of Rs.10,000/-. At that time, he was informed that the amount was already withdrawn from his account. Soon thereafter, he made complaint to the Bank. He has also referred to the specimen signature on the Card which is shown to him (Exhibit 116). He is also shown the questioned withdrawal slip Exhibit 117 dated 24th August 1992. He has asserted that

the same is false and bogus. He has further asserted that the handwriting thereon was not his handwriting nor the signature on that document belonged to him. He has stated that he did not withdraw Rs.10,000/- (Rupees Ten Thousand) on 24th August 1992 on the basis of withdrawal slip Exhibit 117. There is hardly any cross-examination of this witness so as to doubt his credentials or the veracity of the facts asserted by him. Only suggestion is given that he had falsely stated that the signature appearing on withdrawal slip Exhibit 117 was not his signature and that he was giving false evidence at the instance of Central Bureau of Investigation and Bank Officers, which suggestion has been denied by him. In the cross-examination, at the instance of accused No.4, suggestion is given to PW 20 that the signature appearing on the withdrawal slip belonged to him, which has been denied by him. There is no suggestion whatsoever that the handwriting on the said withdrawal slip (Exhibit 117) also belonged to PW 20. Whereas, the fact that the handwriting and signature appearing on withdrawal slip (Exhibit 117) was of Accused No.4 has been substantiated by the evidence of Bank

Official (PW 28) in the same manner as in respect of Exhibit 176. Besides, the oral evidence of the Bank Official, on comparison of the specimen signature of PW 20 on Exhibit 116 with the signature on the questioned withdrawal slip Exhibit 117, even a layman would be able to say that there is qualitative difference in the two signatures. The fact that the signature and handwriting appearing on withdrawal slip Exhibit 117 belongs to accused No.4, has been independently established from the evidence of handwriting expert (PW 30) and the report (Exhibit 262) coupled with the opinion of the handwriting expert. As mentioned earlier, PW 28 has also positively stated that the handwriting on the withdrawal slip (Exhibit 117) as well as the signature were that of accused No.4. PW 28 has also stated that the amount was withdrawn and paid to accused No.4. The withdrawal slip was processed by accused No.1 and payment was recommended inspite of the discrepancy in the signature which was so patent.

20. Taking overall view of the matter, therefore, there is no infirmity in the finding of

fact reached by the Trial Court in respect of the fraudulent withdrawal of the amount from the account of PW 20 under withdrawal slip Exhibit 117. That finding will have to be upheld. It necessarily follows that there is clinching evidence to indicate complicity of both accused No.4 as well as accused No.1 in the commission of offence and being party to the conspiracy.

21. The Assistant Public Prosecutor has justly relied on the exposition of the Apex court in the case of **Mohd.Hussain Umar Kochra etc. v.K.S.Dalipsinghji and Anr. etc. reported in AIR 1970 SC 45**. In Paragraph 15 of the said decision, the Apex Court has expounded the scope of expression criminal conspiracy as defined in Section 120A of the I.P.C., which reads thus :

> "15. ..... Criminal conspiracy as defined in Section 120A of the I.P.C. is an agreement by two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means. The agreement is the gist of the offence. In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one

> integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time be found expedient. New techniques may be invented and new means may be devised for advancement of the common plan. A general conspiracy must be distinguished from a number of separate conspiracies having a similar general purpose. Where different groups of persons co-operate towards their separate ends without any privity with each other, each combination constitutes a separate conspiracy. The common intention of the conspirators then is to work for the furtherance of the common design of his group only....."

22. Insofar as accused no.4 is concerned, there is absolutely no doubt about his complicity which can be spelt out from the oral as well as documentary evidence. The questioned withdrawal slips are filled in by him in his own handwriting and also signatures appearing on the said withdrawal slips have been disputed by the concerned Bank customers. The fact that the handwriting and the signatures on the withdrawal

slips belonged to accused No.4 has been spoken by the Bank Officials who were his contemporaries. The said version is corroborated by the opinion of the handwriting expert and substantiated from the documents on record. Insofar as accused No.1 is concerned, he was obviously party to the conspiracy which position is substantiated on the basis of oral as well as documentary evidence. The Trial Court has rightly taken the view that on comparison of the specimen signature and the signatures appearing on the questioned withdrawal slips, they were so dissimilar that even a layman would not have allowed the same to pass as genuine ones. Inspite of such suspicious circumstance, the accused No.1 recommended payment on the basis of such withdrawal slips which were filled in and signed by accused No.4. The accused No.1 in his written statement, admits that he recommended payment on the basis of such withdrawal slips because there was counter-signature of accused No.4, who was employed in the same Bank. There is, therefore, no reason to depart from the view taken by the Trial Court. In which case, the finding reached by the Trial Court that accused No.1 was

vicariously responsible along with accused No.4 for the commission of offence will have to be upheld.

23. There is yet another strong circumstance which has been relied by the Trial Court. That circumstance involves both accused No.1 as well as accused No.4. It is the withdrawal slip (Exhibit 185) which relates to the account of PW 4. PW 4 has deposed about the fact that he had opened account with State of Bank of India, Treasury Branch on 21st February 1984. He has stated that on that day, the Officer of the Bank obtained his specimen signatures. The specimen signatures were shown to him. He has stated that there are two signatures of his wife and two signatures of his own, being a joint account. The operation of that account was allowed to both the account holders though the deposit facility was allowed only to him. The specimen signature is proved by this witness and marked as Exhibit 67. He has then stated that on 6th October 1992, when he visited the Bank to withdraw a sum of Rs.4,100/- (Rupees Four Thousand One Hundred), he noticed that the amount shown in his passbook was not correct. He

further noticed that amount of Rs.50,000/- (Rupees Fifty Thousand) was misappropriated from his account. He immediately reported the matter to the Branch Manager and lodged his complaint. He has stated that there is entry of withdrawal of amount of Rs.50,000/- (Rupees Fifty Thousand) on 17th July 1992. He asserts that he had not withdrawn that amount with the help of withdrawal slip. He has positively stated that he had not filled up the contents of withdrawal slip dated 17th July 1992 and that the signature appearing on the said slip did not belong to him. He has challenged the correctness of the contents of the withdrawal slip being wrong and false. This witness has been cross-examined but the version given by him in the examination-in-chief has remained unshattered. Only suggestion has been given that he was deposing false that he had not withdrawn amount of Rs.50,000/- (Rupees Fifty Thousand) as per Exhibit 69. His oral version has been substantiated by specimen signature Exhibit 67. The Bank Official (PW 29) has corroborated the version of PW 4 in relation to the questioned withdrawal slip dated 17th July 1992. PW 29 has clearly asserted that

the handwriting and signature on the withdrawal slip was that of accused No.4. This witness has proved Exhibit 185 and the same has been exhibited during his evidence. The witness has also asserted that signature appearing on the reverse side of Exhibit 185 as in the case of other documents referred to by him was of accused No.4. He has also spoken about the fact that accused No.1 has also put his signature on Exhibit 185 as the Passing Officer. This witness has been cross examined but nothing material has come on record. In fact, in the cross-examination, there is admission that on Exhibits 180 to 189, there were already signatures of accused No.4 before the same were presented before PW 29. Though this is in the form of suggestion to PW 29, it has been denied by him. Suggestion is given to this witness that he was deposing falsely at the instance of the Bank. Nothing material has come on record in the cross-examination. Besides, the evidence of PW 29, we have the evidence of PW 32 - the handwriting expert and his opinion which can be discerned from Exhibit 262. That evidence clearly establishes that the accused No.4 was the author of withdrawal

slip Exhibit 185. On comparison of withdrawal slip (Exhibit 185) with specimen signature (Exhibit 67), even a layman cannot accept such signatures having any similarity. Inspite of such suspicious circumstances, accused No.1 recommended payment on the basis of such withdrawal slip. That clearly indicates complicity of the accused No.1 in the commission of alleged offence along with accused No.4. In view of this evidence, it is more than clear that accused Nos.1 and 4 were responsible for the commission of the alleged offence.

24. To get over this position, Counsel for the accused would contend that the withdrawal slip (Exhibit 185) was not put to this witness and has not been proved in evidence in which case, evidence of PW 4 will be of no avail to establish the charge of forgery. Similar argument was raised in respect of PW 2 which has been negatived in the earlier part of this order. Same reasons would apply on all fours to the above said objection. In my opinion, there is no infirmity in the opinion reached by the Trial Court in recording finding of guilt against accused Nos.1 and 4. On the above

analysis, it is not necessary to elaborate on the other circumstances. This Court being the Appellate Court and being satisfied with the three strong circumstances pressed into service against the accused Nos.1 and 4 which have also found favour with the Trial Court, it is unnecessary to dilate further on other matters. In other words, it is not necessary to analyse other prosecution evidence in extenso.

25. One of the argument canvassed on behalf of the accused was that the sanction granted by PW 22 was invalid and suffered from non-application of mind. According to the accused, this Authority did not compare the signatures on the withdrawal slips with the original to reassure himself as to whether case of forgery has been made out from the evidence. Perhaps, the PW 22 restricted examination of only those account numbers. Although this argument is attractive, clearly overlooks the totality of the version of PW 22. From the evidence of PW 22, it is not possible to accept the criticism that the sanction suffers from the vice of non-application of mind. In my

opinion, the Trial Court has rightly rejected this submission as is noted in Paragraph 61 of the impugned Judgment. The Trial Court has found that there is nothing on record to show or suggest that the sanction was granted without proper application of mind. That finding of fact will have to be accepted. From the evidence of PW 22, it is clear that all the relevant materials were considered by him. The sanctioning authority is not expected to sit over the matter as a Court recording finding of guilt against the accused, but has to take a broad view of the matter to reassure itself as to whether case for grant of sanction was made out. In the present case, there was sufficient material before the sanctioning authority to take that view. In the circumstances, the argument that the sanction granted by PW 22 suffers from the vice of non-application of mind, does not commend to me. In fact, for the nature of offence the question of obtaining prior sanction will not arise. It can never be part of official duty to enter into criminal conspiracy to commit forgery and fraud, which charge is proved against the Appellants.

26. Insofar as accused No.1 is concerned, I have already dealt with the relevant material which indicates his complicity in the commission of crime along with accused No.4 being party to the conspiracy. The argument advanced on behalf of accused No.1 that there was no legal evidence that accused No.1 shared common intention or joined hands with accused No.4 for commission of the offence in question, does not commend to me. In my opinion, as has been rightly observed by the Trial Court, there was clinching material on record to establish the guilt of the accused No.1 to wit; on plain comparison of withdrawal slip (Exhibit 176) with specimen signature (Exhibit 63); withdrawal slip (Exhibit 185) with specimen signature (Exhibit 67); and withdrawal slip (Exhibit 117) with specimen signature (Exhibit 116), it was more than clear that the accused No.1 inspite of suspicious circumstances, recommended clearance of the withdrawal slip on the basis of which payment was made to accused No.4. It is established in evidence that the payment has been received by accused No.4 himself. That fact is established from the evidence of Bank Official.

27. The argument of accused No.1 that it was at best a case of negligence, will have to be stated to be rejected. By no standards, on comparison of the signature on the aforesaid withdrawal slips and compared with the specimen signature, even a layman would have allowed the same to pass as genuine signature. It is only if there were to be similarity in two signatures, such argument could have been entertained at the instance of the accused No.1. The Trial Court has already given benefit to this accused with regard to other withdrawal slips handled by him such as Exhibits 180 to 184, 186 and 189 and gave benefit of doubt. However, insofar as withdrawal slips Exhibits 176, 185 and 117 are concerned, the oral as well as documentary evidence was overwhelming to establish the guilt of accused No.1 in the commission of the offence.

28. It was then contended on behalf of the accused No.1 that offence under Section 13(2) read with Section 13(1)(d) of the Act was not applicable as against accused No.1. Even this argument does

not commend to me. Section 13(1)(d) reads thus :

> "13(1)(d) if he,-
>
> (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest"

29. From the evidence on record, it is amply clear that the accused No.1 being Passing Officer abused his position as a public servant and obtained for accused No.4 pecuniary advantage on account of the transactions. Besides, while holding his Office as a public servant, he obtained for accused No.4 pecuniary advantage without any public interest. The act of commission and omission of accused No.1 was by corrupt and illegal means in conspiracy with accused No.4 caused to obtain pecuniary advantage.

30. The last submission canvassed on behalf of

accused No.1 was that the Court may show leniency in favour of accused No.1 while awarding sentence. There are extenuating circumstances, for which such indulgence should be shown. It is submitted that accused No.1 substantially admits the charge. However, his case is that act of commission or omission attributed to him were not with knowledge that accused No.4 was engaged in such illegal activity. Besides, it was a case of pure negligence of accused No.1. Moreover, there were over 22 Bank Officials involved in the process but at the behest of Branch Manager (PW 24), accused No.1 has been made a scapegoat. It is then submitted that the agreed amount payable under withdrawal slips Exhibits 117, 176 and 185 is Rs.80,000/- (Rupees Eighty Thousand), whereas, the accused No.1 has already paid sum of Rs.1,00,000/- (Rupees One Lakh) in terms of the order passed by the Trial Court. Besides, the accused No.1 has already lost his job, as he has been removed from service. That accused No.1 is a diabetic patient and already 75 years old. Moreover, the offence in question is as old as 1992 and the accused No.1 has already undergone imprisonment for a period of one

and a half months during trial. That accused No.1 was willing to pay further fine amount if the Court so ordered. All these were mitigating circumstances to show leniency in favour of the accused No.1. The argument though attractive, does not commend to me. On the point of sentence, the Trial Court has considered the plea of the accused No.1 in Paragraph 66 of the impugned Judgement. Similar argument was raised that the accused No.1 is old person and has been compulsorily retired, for which, leniency should be shown. The Trial Court rightly negatived plea for leniency. In any case, insofar as accused no.1 is concerned, the Trial Court has proportionately reduced the sentence to three years on all counts. In addition, the accused No.1 is ordered to pay fine amount of Rs.10,000/- (Rupees Ten Thousand) on five counts, in default, to undergo rigorous imprisonment for six months in respect of four counts and three months in respect of Section 120-B of the I.P.C. Insofar as offence of Section 13(2) read with Section 13(1)(d) of the Act is concerned, accused No.1 is ordered to undergo rigorous imprisonment for three years and fine amount of

Rs.50,000/- (Rupees Fifty Thousand), in default, to undergo rigorous imprisonment for one year.

31. In my opinion, having regard to the seriousness of the offence, the fact that the accused No.1 has now become old aged about 75 years or has become diabetic patient or that the offence is as old as of 1992, all these cannot be considered as adequate reasons to show leniency nor can be treated as extenuating or mitigating circumstances. The fact that accused No.1 is willing to pay further fine amount, does not take the matter any further. The sentence awarded by the Trial Court of maximum three years of rigorous imprisonment, in my opinion, is just and proper and needs no departure. In that sense, even on the point of sentence, no interference is warranted.

32. No submission was advanced on behalf of accused No.4 for reducing the quantum of sentence, for which reason, it is not necessary to deal with that aspect. For the aforesaid reasons, both the Appeals would fail. The Accused No.1 will have to be taken into custody forthwith, to suffer the

remaining period of sentence.

33. Accordingly, both these Appeals are dismissed. Bail bond of accused No.1 to stand cancelled.

34. While parting, the Court records word of appreciation for the able assistance given by Mr.Girish Kulkarni, who appeared as amicus curiae to espouse the cause of accused No.4 on the request of the Court.

A.M.KHANWILKAR, J.

RIDER:

(7) Stark difference - two exhibits : As mentioned in the opening part of the Judgment, even one circumstance is good enough to bring home the sentence.

A.M.KHANWILKAR, J.